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Attorneys for Plaintiff Amy Swanson

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

AMY SWANSON, individually, on behalf of the
General Public, and as Trustee,

Plaintiff,

v.

AMERICAN EXPRESS FINANCIAL
ADVISORS, INC.; JACK BENARY; and DOES
1 through 100, inclusive,

Defendants.

No. C 03-1445 SC

**JOINT STIPULATION AND
~~[PROPOSED]~~ ORDER DISMISSING
AMENDED COMPLAINT WITHOUT
PREJUDICE PURSUANT TO
F.R.C.P. 41(a)(1)(ii)**

Judge: Hon. Samuel Conti

1 WHEREAS, on June 26, 2003, Plaintiff Amy Swanson ("Swanson") filed an Amended
2 Complaint against Defendants American Express Financial Advisors, Inc. ("AEFA") and Jack
3 BenAry ("BenAry") (the "Amended Complaint");

4 WHEREAS, on July 14, 2003, the parties entered into a Stipulation for Stay Pending
5 Arbitration, in which the parties agreed that the Service Agreement between the parties requires
6 that Swanson's claims against AEFA and BenAry are subject to final and binding arbitration;

7 WHEREAS, on July 21, 2003, the Court ordered that this action be stayed so that the
8 parties may proceed to arbitration pursuant to the Service Agreement between the parties;

9 WHEREAS, on December 10, 2004, the Court held a status conference and set a trial date
10 of July 5, 2005 for this action; and

11 WHEREAS, counsel for the parties conferred over the last week to discuss the status of
12 this action, whether Swanson intends to submit her claims against AEFA and BenAry to
13 arbitration, and potential arbitrators.

14 IT IS HEREBY STIPULATED AND AGREED by and between the parties, through their
15 counsel of record, that:

16 1. The parties agree that Swanson shall have the right to submit her claims against
17 AEFA and BenAry to arbitration before the National Association of Securities Dealers, Inc.
18 ("NASD");

19 2. The parties agree that the submission of Swanson's claims to arbitration before the
20 NASD or any other arbitral forum, as the parties may agree upon, does not waive any substantive
21 defenses that AEFA and BenAry may have to Swanson's claims; and

22 3. Pursuant to Federal Rule of Civil Procedure 41(a)(1)(ii), Swanson voluntarily
23 dismisses her Amended Complaint against AEFA and BenAry without prejudice.

1 IT IS SO STIPULATED.

2 Dated: June 2, 2005

JOHN F. MOUNIER, JR.

3 E-RIGHTS LAW GROUP

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5 By: /s/ John F. Mounier, Jr. (e-filing signature)
John F. Mounier, Jr.

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9 Attorneys for Plaintiff Amy Swanson

10 Dated: June 2, 2005

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21 Attorneys for Defendants
American Express Financial Advisors, Inc.
22 and Jack BenAry

23 ~~**[PROPOSED]**~~ **ORDER**

24 PURSUANT TO STIPULATION, IT IS SO ORDERED.

25
26 Dated: June 3, 2005

/s/ Samuel Conti
27 Honorable Samuel Conti
United States District Court Judge